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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LARRY E. BRAY,) Civil No. 08-0831-WQH(WVG)
12)
13 Plaintiff,) REPORT AND RECOMMENDATION
14) DENYING PLAINTIFF'S MOTION
15 v.) FOR SUMMARY JUDGMENT AND
16) GRANTING DEFENDANT'S MOTION
17 MICHAEL J. ASTRUE, Commissioner) FOR SUMMARY JUDGMENT
18 of Social Security,)
19 Defendant.) (Doc. Nos. 15, 21)
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18 Plaintiff Larry E. Bray (hereafter "Plaintiff"), filed a
19 Complaint For Judicial Review And Remedy On Administrative Decision
20 Under The Social Security Act [42 U.S.C. §405(g)]. Defendant
21 Michael J. Astrue (hereafter "Defendant"), filed an Answer to the
22 Complaint and the administrative record (hereafter "Tr."), pertain-
23 ing to this case. Plaintiff has filed a Motion for Summary Judgment.
24 Defendant has filed an Opposition to Plaintiff's Motion for Summary
25 Judgment and a Cross-Motion for Summary Judgment.

26 The Court, having reviewed Plaintiff's Motion for Summary
27 Judgment, Defendant's Opposition to Plaintiff's Motion for Summary
28 Judgment, Defendant's Cross-Motion for Summary Judgment and the

1 administrative record filed by Defendant, hereby finds that
2 Plaintiff is not entitled to the relief requested and therefore
3 RECOMMENDS that Plaintiff's Motion for Summary Judgment be DENIED
4 and Defendant's Motion for Summary Judgment be GRANTED.

5 I

6 PROCEDURAL HISTORY

7 On July 30, 2005, Plaintiff filed an application for
8 disability insurance benefits, alleging that he was disabled since
9 June 20, 2004. (Tr. 99-103). The Commissioner of Social Security
10 denied his application initially and upon reconsideration. (Tr. 87-
11 98). On October 26, 2006, a hearing was held at which Plaintiff and
12 his wife appeared with counsel and testified before an Administra-
13 tive Law Judge (hereafter "ALJ") (Tr. 656-703). On November 6,
14 2006, the ALJ found that Plaintiff was not disabled given his
15 residual functional capacity for sedentary work. (Tr. 17-23). The
16 ALJ's decision became the final decision of the Commissioner of
17 Social Security when the Appeals Council denied Plaintiff's request
18 for review. (Tr. 5-8).

19 II

20 SUMMARY OF APPLICABLE LAW

21 Title II of the Social Security Act (hereinafter "Act"), as
22 amended, provides for the payment of insurance benefits to persons
23 who have contributed to the program and who suffer from a physical
24 or mental disability. 42 U.S.C. § 423 (a)(1)(D). Title XVI of the
25 Act provides for the payment of disability benefits to indigent
26 persons under the Supplemental Security Income (SSI) program. § 1382
27 (a). Both titles of the Act define "disability" as the "inability
28 to engage in any substantial gainful activity by reason of any

1 medically determinable physical or mental impairment which can be
2 expected to last for a continuous period of not less than 12
3 months..." Id. The Act further provides that an individual:

4 shall be determined to be under a disability only if
5 his physical or mental impairment or impairments are
6 of such severity that he is not only unable to do his
7 previous work but cannot, considering his age,
8 education, and work experience, engage in any other
9 kind of substantial gainful work which exists in the
10 national economy, regardless of whether such work
11 exists in the immediate area in which he lives, or
12 whether a specific job vacancy exists for him, or
13 whether he would be hired if he applied for work. Id.

14 The Secretary of the Social Security Administration has
15 established a five-step sequential evaluation process for determin-
16 ing whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920.
17 Step one determines whether the claimant is engaged in "substantial
18 gainful activity." If he is, disability benefits are denied. 20
19 C.F. R. §§ 404.1520(b), 416.920(b). If he is not, the decision
20 maker proceeds to step two, which determines whether the claimant
21 has a medically severe impairment or combination of impairments.
22 That determination is governed by the "severity regulation" at issue
23 in this case. The severity regulation provides in relevant part:

24 If you do not have any impairment or combination of
25 impairments which significantly limits your physical
26 or mental ability to do basic work activities, we will
27 find that you do not have a severe impairment and are,
28 therefore, not disabled. We will not consider your
age, education, and work experience. §§ 404.1520(c),
416.920(c).

29 The ability to do basic work activities is defined as "the
30 abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§
31 404.1521(b), 416.921(b). Such abilities and aptitudes include
32 "[p]hysical functions such as walking, standing, sitting, lifting,
33 pushing, pulling, reaching, carrying, or handling;" "[c]apacities

1 for seeing, hearing, and speaking;" "[u]nderstanding, carrying out,
2 and remembering simple instructions;" [u]se of judgment;"
3 "[r]esponding appropriately to supervision, co-workers, and usual
4 work situations;" and "[d]ealing with changes in a routine work
5 setting." Id.

6 If the claimant does not have a severe impairment or
7 combination of impairments, the disability claim is denied.

8 If the impairment is severe, the evaluation proceeds to the
9 third step, which determines whether the impairment is equivalent to
10 one of a number of listed impairments that the Secretary acknowl-
11 edges are so severe as to preclude substantial gainful activity. 20
12 C.F.R. §§ 404.1520(d), 416.920(d). If the impairment meets or
13 equals one of the listed impairments, the claimant is conclusively
14 presumed to be disabled. If the impairment is not one that is
15 conclusively presumed to be disabling, the evaluation proceeds to
16 the fourth step, which determines whether the impairment prevents
17 the claimant from performing work he has performed in the past. If
18 the claimant is able to perform his previous work, he is not
19 disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant
20 cannot perform his previous work, the fifth and final step of the
21 process determines whether he is able to perform other work in the
22 national economy in view of his age, education, and work experience.
23 The claimant is entitled to disability benefits only if he is not
24 able to perform other work. 20 C.F.R. §§ 404.1520(f), 416.920(f).

III

ALJ'S FINDINGS

The ALJ made the following pertinent findings:

1. (Plaintiff) meets the insured status requirements of the Social Security Act through the date of this decision.

2. (Plaintiff) has not engaged in substantial gainful activity since February 3, 2005. He did engage in substantial gainful activity from September 20, 2004, until February 3, 2005. In that regard, (Plaintiff's) testimony and record evidence indicates that (his) work activity was both substantial and gainful, his earnings based upon successful competitive employment with no special workplace conditions. There is no record evidence of frequent absences, a period of temporary work remission, or special conditions; nor does the record support (Plaintiff's) alleged unsatisfactory performance.

3. (Plaintiff) has the following severe impairments: coronary artery disease post bypass surgery, hypertension, degenerative joint disease, status post arthroscopy and meniscectomy, and peripheral neuropathy. His alleged depression, anxiety and cognitive dysfunction are not associated with more than minimal limitations, and thus, are not severe. Further, his alleged arrhythmia is controlled and did not satisfy the durational requirements of the Act.

4. (Plaintiff) does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

5. After careful consideration of the entire record, the undersigned finds that (Plaintiff) has the residual functional capacity to perform sedentary work. He is able to lift and/or carry up to 10 pounds occasionally, less than 10 pounds frequently; stand and/or walk for 2 to 4 hours; sit for 6 hours; with no climbing of ladders, ropes or scaffolds and otherwise occasional postural activities; and with no concentrated exposure to extremes of temperature, vibration, or lung irritants. He exhibits mild restrictions of activities of daily living, social functioning, or concentration/persistence/pace, and no episodes of decompensation; nor do the "C" criteria of the listings apply.

The residual functional capacity found herein comports with the findings of the state agency and consultive examiners, who noted no severe mental impairments and

1 found (Plaintiff) able to perform at least sedentary
2 work. The record supports the conclusions reached and
3 reflects stable impairments, controlled with treatment
4 and medication with regard to any continuous period of
5 not less than 12 months. For example, the record
6 reflects objective findings consistent with
7 osteoarthritis and coronary artery disease. (Plain-
8 tiff) underwent bypass surgery in July 2005, reporting
9 only three months of symptoms, and by August 2005 was
10 walking downhill without difficulty and exhibited
11 unremarkable examination signs. Indeed, exercise
12 tolerance was improved. Moreover, Dr. Charlat
13 reported that (Plaintiff) was doing well with cardiac
14 rehabilitation... and his examinations unremarkable.
15 Acute episodes of arrhythmia were controlled by
16 medication, and (his) clinical status was stable and
17 benign. Further, (Plaintiff) was alert and oriented
18 and neuropsychiatrically intact.

19 In that regard, Dr. Magy, a psychologist, found no
20 objective evidence of an organic impairment, noting
21 instead only mild depression and merely recommending
22 antidepressant medication and therapy; (Plaintiff)
23 denied significant depression or anxiety. (Plaintiff)
24 had been referred to Dr. Magy by Dr. Schim, who was
25 uncertain as to the etiology of (Plaintiff's) com-
26 plaints. (Plaintiff's) physical and neurological
27 signs were unremarkable aside from reports of de-
28 creased sensation in the feet. (Plaintiff) reported
improvement with Cymbalta and denied significant side
effects.

Progress notes from (Plaintiff's) primary physician,
Linda Falconio, M.D., reflect medical management of
(Plaintiff's) symptoms, his condition generally stable
and symptom exacerbations acute. He exhibited short-
term and variable exacerbations of hypertension and
low-grade depression, the former controlled with
medications and the latter controlled with and without
medications, (Plaintiff) was taking Cymbalta only for
a short time. Dr. Falconio conceded that (Plain-
tiff's) cardiac impairment level was slight, but
opined on February 17, 2005, that (Plaintiff) was
severely limited in his functional capacity and was
moderately limited on a psychiatric basis. On
February 10, 2005, Dr. Falconio opined that (Plain-
tiff's) physical impairments allowed for medium work,
but his mental impairments were markedly impairing.
On May 16, 2005, Dr. Falconio conceded that (Plain-
tiff) could perform sedentary work in the competitive
workplace, but on May 6, 2006, opined that he would
miss work more than three times per month secondary to
organic brain syndrome and could no longer sit, stand;
and walk for a total of 8 hours per day.

1 I have considered the opinions of Dr. Falconio, but
2 accord those opinions limited weight. Indeed, those
3 opinions are internally inconsistent and are not
4 supported by Dr. Falconio's progress notes, reflecting
5 generally stable and benign signs and no sustained
6 mental status abnormalities.

7 Dr. Rodriguez, consultive examining psychiatrist,
8 found only minimal impairment, (Plaintiff's) complete
9 mental status examination unremarkable aside from mild
10 depression. Similarly, Dr. Lee, a board-certified
11 internist, reported signs and findings consistent with
12 sedentary work during his consultive examination.
13 (Plaintiff) exhibited mild lumbar disc degeneration,
14 facet joint arthritis, mild to moderate knee
15 osteoarthritis, and normal sinus rhythm. (Plaintiff)
16 never required nitroglycerin, his blood pressure was
17 140/76 and his examination was positive for grade I/VI
18 systolic murmur, slight loss of lumbar motion with
19 tenderness, 1+ pitting edema, and knee tenderness and
20 crepitus, with loss of motion and instability.
21 (Plaintiff) was neurologically intact, with a slight
22 limp, but required no assistive device for ambulation.
23 The state agency agreed that (Plaintiff's) mental
24 impairments are not severe and that (Plaintiff) can
25 perform at least sedentary work. Nor did Drs. Skyhar
26 or Bried, (Plaintiff's) orthopedists, opine greater
27 limitations. Indeed, strength was normal, sensation
28 was intact, ligaments were stable, and there was no
effusion following surgery.

Further, Dr. Steiner, who is board-certified in
internal medicine and cardiovascular disease, did not
consider (Plaintiff's) cardiac status impairing to the
degree alleged, but rather, opined limitations that
would allow for the performance of the claimant's past
work. (Plaintiff) has recovered from his July 2005
bypass surgery, which as noted by the medical expert
was not incapacitating for more than three months, and
Dr. Steiner noted that (Plaintiff) is on cardiac
maintenance, including using the treadmill and biking.
Further, the medical expert opined that (Plaintiff's)
mental impairments are mild and controllable with
medications, his cardiovascular status is controlled
and his musculoskeletal status is controlled without
narcotic pain medications. The medical expert con-
cluded that (Plaintiff's) impairments do not meet or
equal any medical listings, including the cardiac
musculoskeletal, or mental listings, and in fact allow
for the performance of medium work. In that regard I
find (Plaintiff) more limited than did the medical
expert, in light of (Plaintiff's) musculoskeletal
impairments, which, combined with his cardiac impair-
ments, limit him to work activities within the
parameters identified by the state agency and
consultive examiners. The medical expert noted that

1 (Plaintiff's) cardiac status is stable, with no end
2 organ damage. His arrhythmia is controlled with
3 medication, his hypertension is controlled with
4 medication, and he exhibits no impairments, physical
5 or mental, that preclude the performance of successful
6 competitive remunerative work.

7 After considering the evidence of record, the under-
8 signed finds that (Plaintiff's) medically determinable
9 impairments could reasonably be expected to produce
10 the alleged symptoms, but that (Plaintiff's) state-
11 ments concerning the intensity, duration and limiting
12 effects of these symptoms are not entirely credible.

13 I have also considered the third-party statements of
14 record from (Plaintiff's) spouse, but accord greater
15 weight to the objective medical evidence and state-
16 ments of disinterested parties. The record reveals
17 that (Plaintiff's) problems are generally longstand-
18 ing, and did not interfere with his conceded ability
19 to work until at least the alleged onset date. In
20 fact, (Plaintiff) admittedly returned to work until
21 February 2005, but argues that his physical condition
22 cannot survive the stress of working. He was never-
23 theless able to travel to Hawaii during the period at
24 issue, and activities of daily living admittedly
25 include golfing, some yardwork, some housework, some
26 shopping, driving, Tai Chi classes, working on the
27 computer/internet, and cardiac maintenance such as
28 biking and using treadmill... (Plaintiff) requires
no... assistive device for ambulation... Indeed,
(Plaintiff) undergoes no regular mental health
treatment, his cardiovascular status is controlled,
his musculoskeletal impairments are controlled without
narcotic pain medications, and there is no evidence of
end organ damage. (Plaintiff) is taking no antidepres-
sant medications; he took Cymbalta only for a short
time, which improved his symptoms... (Plaintiff) has
recovered from his July 2005 bypass surgery which as
noted by the medical expert was not incapacitating for
more than three months, and both he and his wife focus
on (Plaintiff's) cognitive dysfunction when arguing
that he can no longer work. In that regard, objective
findings are not compatible with more than minimal
limitations, and as noted by the medical expert are
only mildly abnormal and represent only mild depres-
sion. Further, the medical expert, who is board-
certified in internal medicine and cardiovascular
disease, did not consider (Plaintiff's) cardiac status
impairing to the degree alleged, but rather, opined
limitations that would allow for the performance of
(Plaintiff's) past work... (Plaintiff) is
neuropsychiatrically intact and exhibits no impair-
ments, physical or mental, that would reasonably
preclude the performance of successful competitive
remunerative work.

7. (Plaintiff) is capable of performing his past relevant work as a claims examiner or sales manager, although not as a claims adjuster. So opined the vocational expert in response to a hypothetical question assuming the residual functioning capacity found herein, and I concur and so find. Either as actually or generally performed, those jobs do not require the performance of work-related activities precluded by (Plaintiff's) residual functional capacity.

8. (Plaintiff) has not been under a "disability," as defined in the Social Security Act, from July 23, 2004 through the date of this decision.
(Tr. 19-23) (citations omitted) (emphasis in original).

IV

STANDARD OF REVIEW

A district court may only disturb the Commissioner's final decision "if it is based on legal error or if the fact findings are not supported by substantial evidence." Sprague v. Bowen, 812 F.2d 1226, 1229 (9th Cir. 1987); see Villa v. Heckler, 797 F.2d 794, 796 (9th Cir. 1986). The court cannot affirm the Commissioner's final decision simply by isolating a certain amount of supporting evidence. Rather, the court must examine the administrative record as a whole. Gonzalez v. Sullivan, 914 F.2d 1197, 1200 (9th Cir. 1990). Yet, the Commissioner's findings are not subject to reversal because substantial evidence exists in the record to support a different conclusion. See, e.g., Mullen v. Brown, 800 F.2d 535, 545 (6th Cir. 1986). "Substantial evidence, considering the entire record, is relevant evidence which a reasonable person might accept as adequate to support a conclusion." Matthews v. Shalala, 10 F.3d 678, 679 (9th Cir. 1993); see Thompson v. Schweiker, 665 F.2d 936, 939 (9th Cir. 1982). The Commissioner's decision must be set aside, even if supported by substantial evidence, if improper legal

standards were applied in reaching that decision. See, e.g., Benitez v. Califano, 573 F.2d 653, 655 (9th Cir. 1978).

V

THE ALJ DID NOT ERR IN NOT MENTIONING PLAINTIFF'S WIFE'S TESTIMONY

Plaintiff argues that the ALJ erred by not addressing Plaintiff's wife's testimony given at the administrative hearing. Defendant contends that Plaintiff's assertion is without merit because the information provided in Plaintiff's wife's testimony did not differ significantly from the information provided in her written statement, which the ALJ addressed.

"Although eyewitnesses have to rely on some extent on communications with the claimant in ascertaining whether (h)e is disabled or malingering," the Ninth Circuit Court of Appeals has held that "family members in a position to observe a claimant's symptoms and daily activities are competent to testify as to (his) condition." Dodrill v. Shalala, 12 F.3d 915, 918-919 (9th Cir. 1993); Sprague, 812 F.2d at 1232.

Social Security rulings require that the ALJ consider lay witness testimony in certain cases.

Social Security Ruling 88-13 states that where a claimant alleges pain or other symptoms that are *not supported by medical evidence in the file*, the adjudicator shall obtain detailed descriptions of daily activities by directing specific inquiries about the pain and its effects to... third parties who would be likely to have such knowledge... The ruling requires the ALJ to give 'full consideration' to such evidence. Having been directed to consider the testimony of lay witnesses in determining a claimant's disability, the ALJ can reject the testimony of lay witnesses only if he gives reasons germane to each witness whose testimony he rejects. Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996)(emphasis in original), citing Dodrill, 12 F.3d at 919.

1 One reason for which an ALJ may discount lay witness
2 testimony is that it conflicts with medical evidence. Lewis v.
3 Apfel, 236 F.3d 503, 511 (9th Cir. 2001), citing Vincent v. Heckler,
4 739 F.2d 1393, 1395 (9th Cir. 1984).

5 1. Plaintiff's Wife's Statement

6 Plaintiff's wife's statement lists Plaintiff's activities and
7 her observations of Plaintiff's limitations. She states that
8 Plaintiff engages in cardiac rehabilitation three times per week,
9 attends Tai Chi classes two times per week, plays golf two times per
10 month, might complete household errands, might make the bed and
11 takes out the garbage. (Tr. 132-136). Additionally, she states that
12 Plaintiff attends church two to three times per week and acts as a
13 greeter on two Sundays each month. (Tr. 136). However, she also
14 states that Plaintiff has problems starting and completing tasks,
15 delays paying bills, has poor decision making ability, poor money
16 spending control, needs reminders regarding personal hygiene and
17 taking his medications, does not have energy, has lost upper body
18 strength, can not perform yardwork or heavy work because his legs
19 hurt all the time and has numbness in his feet, does not lift
20 greater than 20 pounds, can not squat or bend, can not walk more
21 than four to five blocks and can not climb stairs. (Tr. 134-139).

22 Further, Plaintiff's wife indicated that Plaintiff can not
23 focus, prioritize or organize tasks, can not problem solve, requires
24 sleeping pills to sleep, is easily agitated, short tempered and
25 nervous, and has problems with memory and concentration. (Tr. 133,
26 137-138).

1 2. Plaintiff's Wife's Testimony

2 At the hearing, Plaintiff's wife testified about Plaintiff's
3 activities and her observations of his limitations. She stated that
4 she does 90% of the shopping for the household, that "anything
5 around the house is mine, and he used to be a co-partner in that,
6 and ... he ... no longer thinks about it," Plaintiff does a
7 minuscule amount of yardwork and has numb feet and bad knees.
8 Additionally, she testified that he can not start or complete tasks,
9 has memory problems and is less tolerant and impatient. (Tr. 688-
10 689).

11 3. The ALJ Fully Considered The Information Provided
12 in Plaintiff's Wife's Testimony

12 The Court finds that the ALJ gave full consideration to the
13 information provided in Plaintiff's wife's statement. However, the
14 Court's review of her testimony shows that either her testimony
15 conflicts with her statement in one minor regard, and that the
16 remainder of the information contained in her testimony was
17 consistent with her statement.

18 a. Conflict Between Statement and Testimony

19 Plaintiff's wife's statement notes that Plaintiff might
20 complete household errands and shops for groceries and household
21 supplies two to three times per week. (Tr. 132, 134-136). However
22 she testified that she does 90% of the shopping. (Tr. 688). In this
23 regard, her testimony conflicts with her statement. The Court finds
24 that this conflict is minor, at best. Therefore, the ALJ reasonably
25 noted that Plaintiff was able to do some shopping. (Tr. 22).

26 b. Consistencies Between Statement and Testimony

27 Plaintiff's wife's testimony and statement are consistent in
28 every other respect. Plaintiff's wife testified that Plaintiff is

1 less tolerant and impatient. (Tr. 688). These observations are
2 included in her statement. (Tr. 137). She testified that Plaintiff
3 has memory problems regarding taking his medications. (Tr. 688).
4 This observation is included in her statement. (Tr. 134). She
5 testified that Plaintiff does a minuscule amount of yard work. (Tr.
6 689). This observation is included in her statement. (Tr. 135-136).
7 She testified that Plaintiff has numb feet and bad knees. (Tr. 689).
8 These observations are in her statement. (Tr. 135, 139). She
9 testified that Plaintiff can not start or complete tasks and has
10 memory problems. (Tr. 688-689). These observations are included in
11 her statement. (Tr. 134). Therefore, the Court concludes that
12 Plaintiff's wife's statement and her testimony are essentially
13 consistent. Consequently, the ALJ did not need to mention her
14 testimony in his decision because the statement and testimony
15 contain the same information. In fact, the Court observes that her
16 statement is more expansive than her testimony because her statement
17 provides more information about Plaintiff's activities and her
18 observations of his limitations than does her testimony.

19 c. The ALJ Fully Considered the Presented
20 Medical Evidence

21 Social Security Ruling 88-13 requires that where a claimant's
22 allegations of symptoms are not supported by medical evidence in the
23 file, the ALJ must fully consider the evidence offered by lay
24 witnesses. But, the ALJ may discount such evidence if it conflicts
25 with the presented medical evidence. Smolen, 80 F.3d at 1288; Lewis,
26 236 F.3d at 511.

27 Here, it is clear that the record is replete with medical
28 evidence detailing Plaintiff's conditions and limitations. The ALJ
accorded greater weight to the objective medical evidence because it

1 conflicted with Plaintiff's wife's statement and testimony. In so
2 doing, the ALJ specifically noted Plaintiff's own reported activi-
3 ties during the time he claimed he was disabled, his medical records
4 regarding his cardiovascular and psychological conditions, and his
5 musculoskeletal impairments. Further, he reviewed the reports of
6 Dr. Rodriguez, a consultive examining psychiatrist, Dr. Lee, a board
7 certified internist, and Dr. Steiner, a consultive examining
8 internist, who is certified in cardiovascular disease. (Tr. 21-22).
9 The records and reports noted above do not indicate that Plaintiff's
10 conditions and limitations are as severe as the information
11 contained in Plaintiff's wife's statement and testimony.

12 Therefore, the Court concludes that the ALJ did not err in
13 not mentioning Plaintiff's wife's testimony, but instead accorded
14 greater weight to the objective medical evidence presented to him.
15 As a result, the Court RECOMMENDS that Plaintiff's Motion for
16 Summary Judgment be DENIED and Defendant's Motion for Summary
17 Judgment be GRANTED.

18 VI

19 CONCLUSION AND RECOMMENDATION

20 After a review of the record in this matter, the undersigned
21 Magistrate Judge RECOMMENDS that Plaintiff's Motion for Summary
22 Judgment be DENIED and Defendant's Motion for Summary Judgment be
23 GRANTED.

24 This report and recommendation of the undersigned Magistrate
25 Judge is submitted to the United States District Judge assigned to
26 this case, pursuant to the provision of 28 U.S.C. § 636(b)(1).

27 **IT IS ORDERED** that no later than August 20, 2010, any party
28 to this action may file written objections with the Court and serve

1 a copy on all parties. The document should be captioned "Objections
2 to Report and Recommendation."

3 **IT IS FURTHER ORDERED** that any reply to the objections shall
4 be filed with the Court and served on all parties no later than
5 September 7, 2010. The parties are advised that failure to file
6 objections within the specified time may waive the right to raise
7 those objections on appeal of the Court's order. Martinez v. Ylst,
8 951 F.2d 1153 (9th Cir. 1991).

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13 DATED: July 29, 2010

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16 Hon. William V. Gallo
U.S. Magistrate Judge
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